IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.1.2002

CORAM:

THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

SA.NO.803 OF 1990

M. Kalyani ..Appellant

vs.

Melpuram Panchayat Union
rep. By its Commissioner
K.K. District ..Respondent

For Appellant: Mrs.Pushpa Sathayanarayanan

For Respondent: Mr. J.A.Selvakumar

Appeal filed against the judgement and decree of the learned District Judge, Nagercoil, dated 22.7.1989 and made in AS.No.78 of 1988 on the file of the District Court, Nagercoil against the judgement and decree in OS.No.32 of 1988 (Sub Court, Kuzhithurai) dated 3.10.1988.

: JUDGMENT

1.The second appeal is directed against the judgement and decree dated 22.7.1989 passed by the learned District Judge, Nagercoil in AS.No.78 of 1988.

2.The plaintiff is the appellant.

3.The plaintiff filed the suit for declaration that the date of birth of the plaintiff is 10.8.1106 M.E. (23.3.1931 A.D) and her age of superannuation will fall only on 23.3.1991 and consequently for a direction to the defendant to enter her date of birth as 23.3.1931 in the service register.

4.The brief facts are as follows:It is the case of the plaintiff that she was born on 10.8.1106 M.E corresponding to 23.3.1931 A.D and she has studied upto IV Standard in L.M.S. Girls Higher Secondary School, Marthandam. The date of birth was correctly given in school records as 10.8.1106 M.E (23.3.1931 A. D) and a certified copy of the admission register showing the date of birth was produced to the defendant when she joined duty as 'Ayah'. According to the plaintiff, she was only 57 years old

on the date of filing of the suit and she was entitled to be in service till March 1991. The defendant served a memo dated 18.6.1987 to the plaintiff, stating that she was due for retirement on 23.3.1988, to which she gave a reply dated 2.7.1987 and only on the date of receipt of the memo from the defendant, she came to know that her date of birth was wrongly given. Hence, she filed the suit.

5.The defendant, in his written statement, has stated that the plaintiff was appointed as 'Ayah' as per proceedings NO.A1-4386/64 dated 23 .10.1964 and she joined duty on the afternoon of 23.10.1964. At the time of appointment, she had produced relevant certificates and her date of retirement was on 23.3.1988 and her superannuation was with effect from 31.3.1988. The defendant had stated that the certificate shown by the plaintiff at the time of appointment on 23.10.1964 and at the time of opening of the service register on 19.2.1965 contained the date of birth as 10.8.1103 M.E corresponding to 23.3.1928 A.D. The certificate produced by the plaintiff at the time of opening of the service register was returned to her on the same day and she has signed in the service register on 19.2.1965 in the presence of the officers concerned and also put her thumb impression and the then officer has attested her signature and thumb impression in the service register. The defendant also attested the entries in the service register periodically and the date of birth entered in the service register as 10.8.1103 M.E is correct. A memo dated 8.7.1987 was sent to the plaintiff to produce the certificates, which she had produced at the time of admission and at the time of opening of the service register and she has not done so. The copy of the school admission register now produced by the plaintiff was not the one, which she had produced at the time of opening of the service register as it contained the actual date of birth as 10.8.1103 M.E. Moreover, the correction of the entries in the service register has to be made within five years from the date of opening of the service register as per GO.MS.No.1047 of 1 980, which she has not done and therefore, she is bound by the entries in the service register.

6.The trial court accepted the case of the plaintiff and decreed the suit. On appeal by the defendant in AS.No.78 of 1988 before the District Court, Nagercoil, the lower appellate court set aside the judgement and decree of the trial court and allowed the appeal. Aggrieved by the same, the plaintiff has preferred this appeal.

7.The learned advocate for the appellant has contended that Ex.A10 is the copy of the admission register issued by the L.M.S. Girls Higher Secondary School, Marthandam, which relates to the admission of the plaintiff, wherein the date of birth is given as 'Tenth Panguny one thousand one hundred and six

(10.8.1106). The plaintiff also produced the transfer certificate Ex.A1 issued by the L.M.S Girls Higher Secondary School, Marthandam, wherein also the date of birth of the plaintiff is registered as Tenth Panguny, one thousand one hundred and six (10.8.1106) and therefore, the validity of these documents cannot be questioned and the date of birth as entered in those documents have got to be taken into account. It is further submitted that the evidences of PW.3, the brother of the plaintiff and PW.4, who is an independent witness, have got to be accepted with regard to the fact that PW.3 Chellian is locally called as 'Chinna Kutty' and the name found in Ex.B6, the Voters List is one and the same.

8.It is further argued that in the certified copy of the admission register (Ex.A10) produced by the plaintiff in the year 1971 dated 23.8 .1971, M. Chellian is shown in column "Name of Parent or guardian" and the initial of Chellian is 'M' indicating that he is the son of Masilamani and the plaintiff is also the daughter of Masilamani and therefore, the name which finds a place in Ex.A10 and Ex.A1 are one and the same. It is submitted that rejection of Ex.A1, A9 and A10 by the lower appellate court is not correct, as the name of Chellian found in those documents are one and the same person. As M. Chellian happened to be the brother of the plaintiff, he admitted the plaintiff in the school and only in the said circumstances, his name finds a place in the column 'Name of the father or guardian' and the contrary view taken by the lower appellate court is not correct.

9.On the contrary, the learned advocate for the respondent contended that the appellant joined duty on 23.10.1964 and the service register was opened on 19.2.1965. The original of the service register was made available before the Court (Ex.B1), wherein the date of birth of the plaintiff is shown as 10.8.1103 (Malayalam Era) equivalent to 23 .3.1928 A.D. In fact, in the service register, in the column 'date of birth by the Christian Era', the date 23.3.1927 was written and the same was deleted and underneath the date 23.3.1928 was written. It is submitted that on the date of opening of the service register on 19.2.1965 itself, the date of birth in Christian era was wrongly written as 23.3.1927 and the same was corrected as 23.3.1928. At the time of correction, the plaintiff would have, once again, verified the corrected date of birth and the same was correctly entered as 23.3.192 8. It is further argued that the correction of the entries in the service register has to be made within five years from the date of opening of the service register as per GO.MS.No.1047 of 1980 and if the plaintiff felt that her date of birth was wrongly entered in the service register, she should have corrected it within five years from the date of opening of the service register, but she has not done so. As such the plaintiff is not entitled to pray either for correction or alteration of date of birth, at this distance of time.

10.It is further submitted that a memo was given to the plaintiff to produce the documents, produced on the date of joining of the service and also the documents produced at the time of opening of the service register, to arrive at a correct conclusion with regard to the date of birth of the plaintiff, but the plaintiff has not done so. On the other hand, she had obtained another copy in the year 1971 and produced the same Ex.A10, which cannot be relied upon.

11.The contention of the learned advocate for the appellant that the correct date of birth of the plaintiff is 10.8.1106 M.E and not 10.8 .1103 M.E. To sustain her argument, she relied upon Ex.A1, the transfer certificate, dated 11.3.1988, Ex.A9, certified copy of the admission register and Ex.A10, true copy of the admission register dated 23 .8.1971 issued by the L.M.S Girls Higher Secondary School, Marthandam. Now doubt, in Ex.A1, the transfer certificate dated 11.3.1988 issued by the L.M.S. Girls Higher Secondary School, the date of birth of the plaintiff is shown as 10.8.1106 M.E, so also in the school admission register and in the true copy of the admission register Ex.A10. Placing reliance upon these documents, the learned advocate for the appellant would try to impress upon the court that the date of birth of the plaintiff is 10.8.1106 M.E.

12.The contention of the appellant was repelled by the learned advocate for the respondent, who in his argument, has submitted that the plaintiff should have produced the documents at the time when she joined duty and also at the time of opening of the service register and the plaintiff had not chosen to produce those documents to the defendant. The plaintiff has also not given any explanation much less a valid explanation for the non production of those documents. The plaintiff has also not given any explanation under what circumstances she was called upon to produce Ex.A10, true copy of the admission register dated 23.8.1971. The lower appellate court also held that at the time when the plaintiff joined duty, she should have produced the documents and based upon that only, the service register must have been opened and the plaintiff has not chosen to produce those documents and the plaintiff is also not in a position to offer any explanation how an error is crept in the service register, wherein the date of birth of the plaintiff is given as 10.8.1103 M.E. The lower appellate court also had taken into consideration that the plaintiff had put her thumb impression below the date of birth and the said thumb impression was duly

certified. In the said circumstances, it cannot be said that the plaintiff was not aware of the date of birth entered in the service register, which now she challenges before the court.

13.The plaintiff also relied upon the evidence of Pws.3 and 4. PW.3 claims to be the guardian of the plaintiff called

himself as ' Chellian' and 'Chinna Kutty' and who had admitted the plaintiff in the school. But, however, the lower appellate court entertained a great deal of doubt about PW.3 and also his claim for having admitted the plaintiff in the school as he has been residing in Kerala for the past more than 40 years and that he was doing work of 'Mason". But, in Ex.A1, the occupation of M. Chellian is not given. But, in Ex.A9 and A10, the occupation of M. Chellian is given as 'Climber'. No doubt, the initial of Chellian is given as 'M', thereby indicating that he is the son of Masilamani. That alone is not sufficient to come to a conclusion that PW.3 is the brother of PW.1 and he had acted as a guardian in admitting the plaintiff in the school. The lower appellate court also considered the evidence of PW.4 , who according to the plaintiff, is an independent witness. PW.4 had deposed that PW.3 would be locally called only as 'Chinna Kutty' and not as 'Chellian'. Taking into consideration all these aspects only, the lower appellate court came to the conclusion that PW.3 is not the brother of PW.1 and his evidence is unbelievable.

14. The Supreme Court in the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran (AIR 1993 SC 2647 at page 2 650) held as follows:-

"An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such

application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation ..... If the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

15.It is evident that the plaintiff, who had joined duty in the year 1964, has not chosen to question the correctness of the date of birth entered in the service register till the year 1987. It is not in dispute that any correction on the entries in the service register has to be made within five years from the date of opening of the service register and the plaintiff has not done so in this case. The plaintiff having kept quiet for well over a period of more than 20 years, only in the year 1987, had come forward to say that the date of birth entered in the service register is wrong. It is a common knowledge that from the date of joining of the service, the plaintiff would have enjoyed several benefits in the given date of birth and now, she cannot, once again, be permitted to enjoy the very same benefits. Further, there was absolutely no necessity on the part of the defendant, as it has been rightly observed by the lower appellate court, to enter a wrong date of birth in the service register.

16.By taking into consideration all these aspects, I am of the considered view that the lower appellate court is correct in coming to the conclusion that the findings of the trial court are not correct and the date of birth as entered in the service register as 10.8.1103 M.E alone is correct and I do not find any perversity in the findings of the lower appellate court, which requires interference by this court.

17.In the result, the appeal is dismissed and the judgement and decree of the lower appellate court are confirmed. No costs.
25.1.2002

Index: Yes/No
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Assistant Registrar

Sub Assistant Registrar
To:
1.The Subordinate Judge, Kuzhithurai
2.The District Judge, Nagercoil
SRCM

K.GNANAPRAKASAM, J.

SA.NO.803 OF 1990

25.1.2002